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Crisis Management

Government contractors can find themselves in situations demanding a strong and multidisciplinary legal, public relations and government relations response. Whether the company is faced with an allegation of fraud that questions the core of the company's integrity, or someone discovers a critical defect in the company's signature product, the situation can quickly spiral out of control.

BNA INSIGHTS: Crisis Management for Government Contractors

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Sometimes a “perfect storm” can turn a contract dispute or allegation of wrongdoing into a highly visible public crisis that threatens to overwhelm a company and cause serious, if not irreparable, financial and reputational harm. These types of matters can combust, seemingly spontaneously, given the right mix of high stakes and customer, congressional and public (i.e., media) interest, and they tend to spiral into a narrative that puts the company in a troubling light. Because they operate at the center of government and business, often on highly visible and big-dollar programs, these crises are common, if not inevitable, for government contractors. A crisis management plan to prevent, mitigate or resolve such crises is an absolute must.

Crisis management often demands a multidisciplinary legal, public relations and government relations team. Many are familiar with how these crises play out in the broader business world. For example, when the news first broke that Volkswagen had fitted millions of vehicles worldwide with software that could cheat ni-

trogen oxide emissions tests, the company had to scramble to address customer and investor concerns, government investigations and lawsuits, all while fighting to preserve its image in the face of intense media scrutiny.

Volkswagen needed a strong public relations campaign to salvage the company's reputation in the eyes of current and future customers. It also needed contractual, regulatory and government relations expertise to fully understand the company's exposure and to guide management in handling the crisis.

Though few government contracts scandals match the global spotlight of the Volkswagen matter, government contractors can find themselves in similar situations demanding a strong and multidisciplinary response. Whether the company is faced with an allegation of fraud that questions the core of the company's integrity, or someone discovers a critical defect in the company's signature product, the situation can quickly spiral out of control.

At the most basic level, the company will have to deal with the customer agency's concerns about the overall quality of performance and compliance with the contract. The consequences could range from adverse past performance evaluations that could harm the company's competitive standing in future competitions, to a termination for default with the attendant permanent black stain on the company's contracting record. The customer agency's Office of Inspector General, the Department of Justice, or both, could open an inquiry into the contractor's performance that could quickly transform into a full-scale companywide investigation. The contractor could also quickly find itself facing stop-work orders, withholdings, excess procurement costs, civil or criminal fines, or suspension or debarment proceedings. Contractors facing these multifaceted crises need expert legal guidance to navigate the corresponding contractual, administrative, civil and criminal risks.

It is also common for government contracts scandals to generate interest from members of Congress, who want to show their constituents that they are fighting fraud, waste and abuse in government programs. Contractors could find themselves subpoenaed to appear before congressional committees that, at best, want to get to the bottom of the issue, or, much worse, want to publicly flog the company and its executives.

The press plays a unique role in these matters. As many contractors have learned over the years, an article in *The Washington Post* accusing your company of wrongdoing could be the catalyst for investigations by your agency customers, law enforcement and Congress.

Even if the press gets wind of an issue well after the government, a high-profile story can add fuel to the fire and put additional pressure on government actors to show that they are doing their job. And as anyone who's ever had personal knowledge of a story can tell you, the press typically only gets about half of the story right.

So when the press is involved, contractors must be prepared to quickly correct any inaccuracies or counter unfavorable spin. Even if the company ends up fully prevailing on the legal fronts, a company could still be found "guilty" in the court of public opinion if the press is not handled properly.

Contractors facing the "perfect storm" described above must create a multidisciplinary crisis management team to address these legal, public relations and government relations issues simultaneously. Such an effort requires an "Inventory/Investigate/Integrate," or "I-Cubed" approach. This requires the following steps:

- *Inventory* the legal and contractual issues, players, and affected constituencies and stakeholders. As noted previously, in the government contracts context, this can involve dealing with agency customers, regulators, law enforcement, suspension and debarment officials, congressional committees and the press. Without a full inventory of all the various facets to the crisis, the contractor risks failing to address a key stakeholder or pending issue.

- *Investigate* the issues to master the relevant facts and arm yourself to get ahead of the story. The contractor is typically in the best position to get all the facts first — and it must take the opportunity to do so. Without the facts, the legal, public relations and government relations teams cannot effectively do their jobs.

- *Integrate* what is learned from the inventory and investigation to assess the risks the company is facing and the messages it needs to deliver to the affected constituencies. Contractors should assume that any information shared with one constituency could be shared with another, and assess the risks accordingly. All aspects of the multidisciplinary crisis management team should be involved in these discussions.

Given the importance of factual development and accuracy in ongoing communications, and responses to questions in these matters, companies often choose to have counsel serve as the principal focal point for a company's response to such crises.

Companies will also need to consider trade-offs to balance competing desires to protect the company's legal and contractual position and to "take responsibility" publicly for any mistakes that may have been made. These trade-offs will not always be resolved in favor of protecting fully the company's legal position, but it is critical that the company have a disciplined process to ensure that management makes any such trade-offs on as fully informed a basis as possible.

Crisis management is an unavoidable cost of doing business with the government. Contractors that understand how to deal with crises when they arise will be best positioned to limit financial and reputational harm, and survive going forward.